

NATURAL RESOURCES COMMISSION
Meeting Minutes
February 20, 2008

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, February 20, 2008. The following Commissioners were present: Alexander Easterday, Chair, Jamie Bemis, and George Lewis. Montgomery Lovejoy arrived at 7:25 p.m. Delia Kaye, Natural Resources Administrator, and Cynthia L. Gray, Natural Resources Administrative Assistant were also present.

CONTINUANCES:

TOWN OF CONCORD – Railroad Right-of-Way (Bruce Freeman Rail Trail) / ANRAD – Request for confirmation of wetland resource areas, DEP File #137-948

Attorney Luke Legere of McGregor & Associates appeared with Patrick Garner of Patrick C. Garner Company, Inc. representing a group of concerned citizens. Revised plans were received from the Applicant's representative, Vanasse Hangen Brustlin, Inc. (VHB) this day showing the 200-foot Riverfront Area between Wetlands 7 and 8. Patrick Garner narrated a video of Wetland 3A and areas downgradient taken on February 19, 2008. He submitted a DVD, photographs and a marked-up plan of the area between Wetland 3A and Wetland 3. Mr. Garner stated the video showed uninterrupted flow of a stream between Wetland 3A and Wetland 3, and so this area should be regulated. Delia Kaye noted that observation of stream flow does not meet the regulatory definition of Bank, and that overflow conditions would be expected under conditions of high flow, adding that the Assabet River is above flood stage and the Sudbury and Concord Rivers have recently receded below flood stage. Attorney Legere noted that Land Under Water (LUW) is also associated with this stream as a channel is based on function and not appearance. The Commission noted that flow would be expected at this time of year, and that the area in question functions as an overflow channel. William Sheehan of 13 Stone Root Lane asked the Commission to be conservative in its decision. Upon discussion, George Lewis moved to close the hearing. Jamie Bemis seconded. All so voted.

The Commission expects to issue an Order of Resource Area Delineation at the March 5, 2008 hearing.

THE FIRST PARISH IN CONCORD – 16 Lexington Road / NOI – Building renovations including a third floor addition; redevelopment of parking lots, driveways, walkways, and landscaping; installation of a new drainage system within Bordering Land Subject to Flooding and 200-foot Riverfront Area to Mill Brook and in the 100-foot Buffer Zone to Bordering Vegetated Wetland and Bank, DEP File #137-960
At the request of the Applicant, this matter was continued to March 5, 2008.

BREITMAIER – 50 Garfield Road, Lot 2 – Constructing a retaining wall and installing a drainage structure within the 100-foot Buffer Zone to Bordering Vegetated Wetland, DEP File #137-962

John Rockwood of EcoTec, Inc. appeared together with the Applicant, Steven Breitmaier. The Applicant submitted a revised plan showing the construction sequence of the proposed retaining wall. The Applicant wishes to move the wall to increase the yard. Delia Kaye noted that a memorandum was received that day from Concord Public Works again requesting calculations for the proposed bioretention area. John Rockwood stated that a bioretention area was probably not possible and that the proposed bioretention area, designed as a flow dissipater, would improve water quality. Alexander Easterday suggested the Applicant consider a compromise regarding the wall by keeping the southern portion of the wall at 40 feet from wetlands, then wrapping the eastern portion around at a distance of 40 feet from wetlands. This would create more area for lawn than is currently provided and not pose a threat to wetlands. Alexander Easterday also stated management of the invasive species could be accomplished over time by doing a cut and dab method, as this would benefit the wetland. Steven Breitmaier indicated to the Commission that his preference was to remain with the proposed plan as presented.

As presented, the proposed project does not meet the Burden of Proof for work in a buffer zone. The Commission believes that the project will alter downgradient resource areas through extensive removal of vegetation, regrading, and soil disturbance. The Applicant also did not provide adequate information for review. As stated in a memorandum from William Renault, Concord Public Works Engineer, dated February 20, 2008, there are outstanding issues with the proposed stormwater improvements including calculations for the proposed bioretention area since the calculations provided were for a flow dissipater.

Montgomery Lovejoy moved to close the hearing. George Lewis seconded. All so voted.

The Commission expects to issue a Denial of the Order of Conditions at the March 5, 2008 hearing.

REQUEST FOR EXTENSION:

BREITMAIER – 50 Garfield Road, Lot 2, DEP File #137-830

George Lewis moved to issue a one-year Extension of the Order of Conditions. Jamie Bemis seconded. All so voted.

NEW APPLICATIONS:

BRYANT – 61 Musketaquid Road – Removing a portion of the existing single-family dwelling and constructing an addition together with site improvements including constructing a retaining wall, expanding the paved driveway, vista pruning, and

landscaping within Bordering Land Subject to Flooding, the 200-foot Riverfront Area of the Sudbury River, and the 100-foot Buffer Zone to Bordering Vegetated Wetland, **DEP File #137-964**

Greg Roy of Ducharme & Dillis Civil Design Group appeared together with Applicants, James Bryant and Christine Cournoyer. This filing is in response to the Division of Natural Resource's (DNR's) request for the Applicant to file for unauthorized tree and shrub clearing along the Sudbury River. Additional work is proposed regarding clearing and vista pruning. A new driveway consisting of 1,800 square feet of impervious surface to access a proposed three-bay garage is also proposed. Approximately 1,000 square feet of the existing driveway area will be removed in front of the existing garage (this structure will be converted to a workshop or greenhouse). The Applicant is considering brick on stone dust on the existing driveway loop. The Applicant stated drainage problems are ongoing from construction from above their lot. Delia Kaye asked for clarification on the location of the discharge from an existing manhole in front of the garage. The Applicant will provide this information at the next hearing. The Commission requested that the Applicant consider reducing the impervious surface for the proposed driveway, possibly by removing some pavement in front of the cottage within the Riverfront Area. A site visit was scheduled for Tuesday, March 4, 2008 at 1:00 p.m.

This hearing was continued to March 19, 2008.

REQUEST TO AMEND ORDERS:

BERCEL – 61 Black Duck Road, DEP File #137-864

The request to Amend the Order of Conditions involves substituting the FAST sewage treatment unit with a Presby Enviro-Septic Wastewater Treatment System located within the 100-foot Buffer Zone to Bordering Vegetated Wetland.

Duncan Brown, P.E. appeared with the Applicant, Diana Bercel. The Applicant proposed substituting the FAST sewage treatment unit to be replaced by a Presby Enviro-Septic Wastewater Treatment System because the original design has proved too expensive. The Applicant has received initial Board of Health approval and DEP approval. Ms. Bercel will now obtain final Board of Health approval.

Jamie Bemis moved to issue an Amended Order of Conditions. George Lewis seconded. All so voted.

CLOSE HEARING/ISSUE PERMITS:

CONCORD HOUSING TRUST, INC. – 335 Walden Street / ANRAD – Request for confirmation of wetland resource areas, DEP File #137-963

Montgomery Lovejoy moved to close the hearing. Jamie Bemis seconded. All so voted. Montgomery Lovejoy moved to issue an Order of Resource Area Delineation as presented and shown on plans on file. Jamie Bemis seconded. All so voted.

OTHER BUSINESS:

Lot 6E Forest Ridge Road and Proposed Dedication of Land to the Town –

Presentation by Kevin Hurley

Kevin Hurley appeared on behalf of Thoreau Realty Trust to present two applications pending with the Zoning Board of Appeals. The first proposal would amend a Special Permit granted to Forest Ridge Corporation in 1997. The Special Permit was granted to dedicate 12.2 acres of land and the transfer of the development rights (TDR) from parcel B-1 to Lot 6E. The Amendment seeks to transfer the development rights from Lot 6E to Lot 5D. The second proposal seeks to dedicate 3.07 acres of land to the Town for conservation purposes (Parcel B), and to transfer the development rights to Lot 5D. This conveyance would bring the total conservation land in the area gifted to the Town to 22.3 acres. Mr. Hurley circulated photos of the Conservation Restriction land and the proposed land for dedication. The land that will be dedicated is not developable because it is wetlands, floodplain, and Riverfront Area, but the potential exists for the abutters to purchase it and increase development on their parcels. Mr. Hurley requested that the Commission submit their comments to the Zoning Board of Appeals in favor of this project.

Montgomery Lovejoy moved to submit comments to the Board of Appeals in support of this project. Jamie Bemis seconded. All so voted.

181 Lowell Road Violation – presentation by Sandra Folk

Sandra Folk appeared to discuss the violation consisting of the cutting of approximately 100 trees at Old Calf Pasture. The Commission noted the significant and serious Wetland Protection Act violation and the trespass on Town property. Sandra Folk stated that her ex-husband was trying to help by clearing the area. She noted that her ex-husband had called about getting the field cut but that the field appeared to not have a regular mowing schedule. Jamie Bemis noted that Ms. Folk must have known that the clearing was on Town land because the clearing occurred far beyond their property line. She added that the tree clearing was dangerous to Town personnel mowing the field because the stumps were not visible through the grass, and if a mower or tractor hit the stump it could cause it to overturn. Ms. Bemis suggested that the stumps be flush cut and fresh manure put on top to expedite the decomposition process. She noted that the Commission felt that fining and mitigation were appropriate given the magnitude of the violations. Montgomery Lovejoy noted that a mitigation plan be put together by a professional as this violation involves wetlands, floodplain and rare species habitat (Britton's violet). The state Natural Heritage and Endangered Species Program could also assist Ms. Folk regarding Britton's violet, and a management plan would require their approval because the tree clearing occurred in mapped rare species habitat. Alexander Easterday requested that the stump flush cutting be part of the management plan. Mr. Easterday also advised Ms. Folk that Old Calf Pasture is mowed annually by Concord Public Works.

The Commission discussed permanent markers along Ms. Folk's property lines to create a physical boundary to eliminate any future violations. The Town Manager supports a \$1,000/tree fine as a starting point for unauthorized work on Town land. Montgomery

Lovejoy noted that Ms. Folk's efforts to prepare a restoration plan would be taken into consideration when assessing the fine.

Mr. Easterday reiterated the importance of Ms. Folk retaining a wetlands consultant to submit a restoration plan by June 1st. The plan needs to include proposed permanent markers, delineation of the wetlands, and a plan to restore the area. The plan should be prepared by a botanist familiar with wetlands regulations and the rare Britton's violet. The plan must also be reviewed and approved by the Natural Heritage Program. The brush piles must be removed. The Commission requested that a copy of the approved minutes of this meeting be forwarded to Ms. Folk together with a cover letter for her reference. The Commission also requested that Natural Resources staff contact Ms. Folk on a monthly basis for an update on her progress with the restoration plan.

597 Lowell Road Violation – presentation by the Van der Wansems

The Commission has not received a plan or a Notice of Intent to date after repeated requests to the Van der Wansems regarding unauthorized work on their property. The Commission reminded the Van der Wansems that they are enforcing state law and requested that the Van der Wansems supply a plan by June 1, 2008 showing the limits of work and frequency of mowing. This translates to 14 months from the original request made by DNR staff for compliance. The Van der Wansems stated that they had received verbal approval from Dan Monahan in the 1980s to conduct work. The Commission reiterated that the work was likely to be approved, but that a permit was required for all activities within jurisdictional areas, and that the Van der Wansems needed formal approval from the Commission. The plan should show limits of cleared areas so that this can be referenced if future questions arise on approved activities and limits of work.

Marabello/Boston Bark

The Commission will be conducting a site visit in the spring to address possible wetland issues. The Commission questioned whether the wetlands have ever been delineated on this parcel.

Wetland Bylaw Update

Alexander Easterday met with members of the Concord Economic Council at Emerson Hospital on February 13, 2008 to open dialogue on the proposed Wetland Bylaw. Based on this meeting, Mr. Easterday suggested that the Commission prepare a fact sheet on vernal pools and have on hand various other slides for discussion. Mr. Easterday reported valuable feedback from the Economic Council. Council members asked for clarification of a non-zoning versus a zoning bylaw. The Commission will explore ways to better clarify responses to these questions.

Approve December 19, 2007 meeting minutes

Jamie Bemis moved to approve the December 19, 2007 meeting minutes as presented. Montgomery Lovejoy seconded. All so voted. George Lewis abstained.

Approve January 23, 2008 meeting minutes

Jamie Bemis moved to approve the January 23, 2008 meeting minutes. George Lewis seconded. All so voted. Montgomery Lovejoy abstained.

Approve February 6, 2008 meeting minutes

George Lewis moved to approve the February 6, 2008 meeting minutes. Jamie Bemis seconded. All so voted. Montgomery Lovejoy abstained.

The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant